IT’A SMALL WORLD AFTER ALL:
HOW DISNEY’S TARGETED ADVERTISEMENTS IMPLICATE COPPA

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I. Introduction

The mission of the Walt Disney Company (“Disney”) is “to be one of the world’s leading producers and providers of entertainment and information.” Disney is ranked as one of the world’s top ten most powerful brands and is certainly living up to that statement. With

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2See About the Walt Disney Company, THE WALT DISNEY CO. (2017), archived at https://perma.cc/59RG-TB2G [hereinafter About] (stating the company’s mission to development the most creative and profitable entertainment experiences in the world). To achieve this mission and be profitable, Disney strives to be creative and innovative in their content, services, and consumer products. Id.; see also Rafiq Elmansey, Disney’s Creative Strategy: The Dreamer, The Realist and The Critic, DESIGNORATE (2017), archived at https://perma.cc/QB87-YDEY (highlighting that “[i]n a way, Disney’s chosen medium of expression, the animated film, characterizes the fundamental process of all genius: the ability to take something that exists in the imagination only and forge it into a physical existence that directly influences the experience of others in a positive way.”). One of the advantages of Disney’s creative strategy method is balancing between both dream and reality to build a viable layout. Id.
3See Julien Rath, The 10 Most Powerful Brands in the World, BUS. INSIDER (Feb. 25, 2017), archived at https://perma.cc/XCS4-4M3D (ranking brands by their monetary
2018 revenues exceeding $55 billion, Disney has earned its spot as number 55 on the 2018 Fortune 500 list and number 176 on the 2018 Fortune Global 500 list.\(^4\)

Disney draws on treasured stories and characters from Disney, Pixar, and Marvel favorites to create interactive gaming experiences for “fans of all ages.”\(^5\) These gaming experiences are open to both children and adults, but require users to provide personal information such as email addresses, as well as enabling location tracking on mobile devices.\(^6\) A recent class action lawsuit begs the question: what happens when the “fans of all ages” using the mobile applications include children under the age of privacy consent?\(^7\) The plaintiffs allege that Disney mobile applications violate the law, by tracking users under the age of 13 without parental consent, in ways that facilitate “commercial exploitation.”\(^8\)

As mobile applications become more prevalent and readily accessible in today’s online marketplace, concern for children’s value and discerning the world’s most powerful companies are those whose financial value is most impacted by their branding).

\(^4\)See Fortune 500, TIME INC. (Apr. 8, 2017), archived at https://perma.cc/4FZC-A8KK (recognizing the U.S. list represents two-thirds of the U.S.’s GDP with $12 trillion in revenue); see also Global 500, TIME INC. (Apr. 8, 2017), archived at https://perma.cc/AZR8-73AC (highlighting the global list represents $27.7 trillion in revenue); see also Fortune 500, TIME INC. (May 5, 2019), archived at https://perma.cc/9PKT-VMSS (providing 2018 rankings); see also Global 500, TIME INC. (May 5, 2019), archived at https://perma.cc/P48X-5JTG (quantifying 2018 Global rankings).

\(^5\)See Brian Fung & Hamza Shaban, These 42 Disney apps are allegedly spying on your kids, WASH. POST (Aug. 7, 2017), archived at https://perma.cc/ZP6U-R9ZP (signifying that Disney has a strict compliance program and maintains strict data collection and use policies for applications created for children and families).

\(^6\)See id. (discussing the collection of information through Disney mobile applications such as children’s email addresses, ages, and their full names).

\(^7\)See id. (outlining the class action lawsuit filed against Disney in August of 2017 for privacy implications in Disney’s mobile gaming applications).

\(^8\)See id. (alleging that Disney and its partners allowed the software companies to embed trackers in specific mobile applications and “[o]nce installed, tracking software can then ‘exfiltrate that information off the smart device for advertising and other commercial purposes’”). The activity of Disney collecting information about children, and then using this information for its own commercial, financial benefit by selling it to third-party advertisers amounted to “commercial exploitation” in the class action. Id.; Commercial Exploitation, WEX LEGAL DICTIONARY (Feb. 26, 2019), archived at https://perma.cc/B4ZW-JMEB (defining commercial exploitation as a “[t]erm that includes all activities used to benefit commercially from one’s property.”).
privacy grows. Children’s apps often collect data about users without disclosing the practice to parents. Device identification and usage, phone number, and geolocation are some of the items tracked by embedded software in the mobile applications resulting in a cause for parental concern. This collected data can then be packaged in a detailed profile and transferred or sold to advertising companies and analytic providers. In an attempt to regulate this data extraction process, the Children’s Online Privacy Protection Act (“COPPA”) puts parents in control of consent before companies can collect information through embedded software. With this heightened protection for children, Disney is now in the spotlight, being accused of tracking children’s habits through its mobile applications, without parental consent. It may be no coincidence that the marketing and advertisements users receive are based upon Disney’s embedded software in its mobile gaming applications that evade parental consent.

This Note will attempt to highlight the pending class action litigation against Disney by analyzing the legality of embedded software in Disney’s mobile gaming applications under COPPA. First, this Note will undergo a history of the gaming industry and the regulations that have been enacted regarding online children’s privacy. It will specifically focus on the 1998 COPPA regulation and the

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10 See id. (observing that a significant amount of information is siphoned from mobile devices without disclosing the process to parents).

11 See id. (explaining that about 60% of user’s unique device identification information was sent to third-parties, while only about 20% of the applications had information regarding privacy disclosures).

12 See id. (detailing that private data from an individual’s mobile device can end up with advertising companies and analytics providers).


14 See Fung & Shaban, supra note 5 (contending that Disney may have violated children’s privacy protection polices in more than 40 of its mobile gaming applications).

15 See Fung & Shaban, supra note 5 (questioning whether Disney has violated COPPA in its mobile gaming operating segment by embedding trackers into applications).
legislative history proceeding and antecedent its enactment. It will also provide a history of other litigation that has involved companies and COPPA violations. Second, this Note will present the creation and development of Disney’s mobile applications and games, along with its financial strength in the entertainment industry. It will premise the mobile applications that are in question under the class action litigation. It will also premise the pleader’s argument and the contrary argument of Disney. Then, this Note will analyze whether Disney has violated COPPA through its mobile gaming applications and the potential outcomes of the class action litigation. Finally, this Note will conclude with the likely outcome of settlement and what this result could mean for Disney and the mobile gaming industry.

II. History

A. History of the Gaming Industry

In 1991, the World Wide Web (“Internet”) was first introduced. Computers were no longer simply used to send files back and forth between users; they became a gateway to an abundance of information that anyone could retrieve. By the next year, Congress believed that the Internet could be used for commercial purposes. With the support of Congress, companies in all industries were quick to set up websites. This would allow companies over the next few years to sell goods directly to consumers and increase their profit potential. By 1993, the Internet became a part of the public

17See id. (realizing how the Internet was a “web” of information and anyone who had access to the Internet could easily retrieve information).
18See id. (observing that shortly after the development of the Mosaic (later known as Netscape) browser, Congress saw the commercial value of the Internet).
19See id. (portraying that companies were quick to realize the potential value of the Internet and set-up websites of their own).
20See id. (identifying that e-commerce entrepreneurs began to use the Internet to sell goods directly to customers); see also Marissa Fessenden, What Was the First Thing Sold on the Internet?, SMITHSONIAN MAG. (Nov. 30, 2015), archived at https://perma.cc/WBR7-TTNN (providing that one of the first rumored transactions was in August of 1994, where a man named Dan Kohn, who developed an online company called NetMarket, sold a CD of Sting’s “Ten Summoner’s Tales.”).
domain, which allowed individual consumers to purchase monthly internet access through a service provider. The public’s new ease of access, combined with companies setting up websites, quickly expanded the Internet to an online marketplace for goods and services.

In addition to information access and a marketplace for goods and services, users embraced the Internet for gaming. Since its commercial introduction in the 1950’s, gaming has developed into one of the world’s most profitable entertainment industries. In the 1970’s, Intel’s invention of the first microprocessor for personal computers led to the implementation of the technology in in-home gaming consoles. With numerous companies attempting to penetrate the market with their in-home consoles and games, the market quickly became saturated and the industry experienced the 1983 North American Video Game Crash. With this crash, in-home gaming consoles were on the decline, and the popularity of home computers was on the rise and personal computer gaming took on a

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21See Riad Chikhani, The History of Gaming: An Evolving Community, TECH CRUNCH (Oct. 31, 2015), archived at https://perma.cc/PHQ6-6DVB (setting forth the timeframe of less than five years for public access to “online” gaming on internet in the early 1990’s).

22See The Invention of the Internet, supra note 16 (providing how public access to the Internet sparked companies to provide online availability of their services).

23See Chikhani, supra note 21 (spotlighting how since the 1950’s the gaming industry has boomed into one of the most profitable entertainment industries in the world). In the 1960’s, Taito and Sega were the first companies to attract the public’s attention with their introduction of arcade gaming and their coin-operated games gained significant popularity. Id. Observing the public’s interest in these electro-mechanical games, 1972 brought Atari into the market. Id. After Atari’s first successful electronic video game in 1973, arcade gaming materialized, and Arcade machines were popping up in bars, shopping malls, and bowling alleys. Id.

24See Chikhani, supra note 21 (noting that more than 42% of Americans are gamers and four out of five U.S. households have a gaming console).

25See Chikhani, supra note 21 (declaring Intel’s microprocessor invention for personal computers was versatile and led to the development of in-home gaming consoles). Between 1972 and 1985, the gaming industry began to expand, and over 15 new companies penetrated the market. Id.

26See Nadia Oxford, Ten Facts about the Great Video Game Crash of ’83, IGN (Sept. 21, 2011), archived at https://perma.cc/SM9X-2XA4 (discussing the market saturation that led to in-home gaming decline). Between 1981 and 1983, the increase of consoles in the market became too large with “not nearly enough compelling software to sustain them.” Id.
new life.²⁷ By the early 1990’s, developments in personal computers brought about multi-player gaming, where multiple users on different computers could play against each other.²⁸ With this, users saw the development of the Internet, and shortly thereafter, multiplayer gaming took on a new life.²⁹ Since the early 2000’s, technological capabilities have greatly changed; the development of wireless internet, rapid computer processor technology, easier product accessibility, lower technology costs, and the development of smartphones and tablets have all contributed to the mobile gaming industry’s success.³⁰ Mobile app stores entered the market in 2007 and changed the way people play games.³¹ Entertainment at users’ fingertips has widened the gaming demographics and brought the gaming industry to the forefront of technological developments.³² In 2016 alone, the worldwide revenue of the mobile gaming market reached $40.6 billion.³³ Additionally, 37 percent of the revenue generated in the gaming industry was

²⁷ See Chikhani, supra note 21 (elaborating about P.C. game development during the sharp decline of in-home consoles). During the time consoles became unpopular, home computers rose in popularity due to their much more powerful processors which then led to advanced game development. Id.
²⁸ See Chikhani, supra note 21 (delving into the world of multi-player gaming). Multiple users could play against each other by connecting MIDI-OUT and MIDI-IN ports with one another, however, this proved to cause lag-times in the gaming experience. Id.
²⁹ See Chikhani, supra note 21 (explaining the development of the Internet in the early 1990’s facilitated the multi-player technology). After perfecting the lag-times and user experiences with this multiplayer technology, the 2000’s saw the developments of Sony, Xbox, and Nintendo. Id. It is estimated 3.2 billion people currently have access to the internet and at least 1.5 billion of these people play online video games. Id.
³⁰ See Chikhani, supra note 21 (declaring changes over time have drastically and significantly improved gaming).
³¹ See Chikhani, supra note 21 (stating the development of mobile gaming and that the move to mobile technology has defined the recent shift to mobile gaming). Millennials, especially, lead on-the-go lifestyles where mobile gaming has proven useful. Id.
³² See Chikhani, supra note 21 (stipulating technology companies such as Apple and Google invest in mobile gaming due to the companies game sale earnings from their appropriate application stores).
³³ See John Ballard, The Best Way to Invest in Mobile Gaming, THE MOTLEY FOOL (Mar. 25, 2017), archived at https://perma.cc/4MCC-MEXJ (articulating industry revenues are very successful in the mobile gaming industry as shown by a report from Newzoo indicating that mobile game sales generate 37% of revenue in the video game industry).
attributable to the mobile gaming segment. For example, a popular mobile gaming app, “Angry Birds,” made $200 million alone, and exceeded 2 billion downloads in 2014.

**B. Foundation of COPPA**

So how does this affect children? Kids under 13 spend an average of two hours per day playing mobile games. Even before mobile gaming, however, the development of the internet raised concerns for children and their privacy. Flashback to the 1993 public availability of the Internet. The late 90’s and early 2000’s attracted many child users. By 2001, 59 percent of children used the Internet. In a time when more than half of children were using the Internet, online privacy became a greater concern for parents. In the 1990’s, online privacy protection for children centered around child pornography and an attempt to prohibit the exploitation of children

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34 See id. (discussing that mobile gaming supports a significant portion of the industry’s revenues, especially in today’s technological world).
35 See Chikhani, supra note 21 (highlighting that the mobile application, “Angry Birds,” has been enjoyed by millions of people since its development and accounted for $200 million in 2012 alone).
36 See Kevin C. Tofel, Kids under 13 spend an average of 2 hours a day playing mobile games, GIGAOM (Jan. 28, 2015), archived at https://perma.cc/4NPB-7EFH (noting that children ages 2 to 12 years old spend a large portion of their day playing mobile games due to the ease of access).
37 See id. (explaining that the time children spend playing mobile games is due to the accessibility of games on a mobile device).
38 See Zuzanna Pasierbinska-Wilson, The History of Data Privacy in Social Data and its Milestones, EDATA SIFT (Feb. 26, 2015), archived at https://perma.cc/LN9B-58HH (noting that in the mid to late 1990’s, “most online privacy protections were centered around the prevention of child pornography and its proliferation and also prohibiting the online exploitation of citizens under the age of consent.”).
39 See The Invention of the Internet, supra note 16 (reiterating the development of the Internet through a program called Mosaic, which offered a user friendly way to search the web). Mosaic, which later became Netscape, was developed in 1992 by a group of students and researchers at the University of Illinois. Id.
41 See id. (quantifying the number of child-users on the internet as 58.5%).
42 See Pasierbinska-Wilson, supra note 38 (outlining privacy concerns for parents regarding the internet’s social atmosphere).
under the age of consent. With this growing concern from parents, Congress became involved. With the internet being new to consumers there were no protections for children online, and as a response to this lack of protection, Congress passed the Children’s Online Privacy Protection Act (“COPPA”) on October 21, 1998. Primarily enforced by the United States’ Federal Trade Commission (“FTC”), it provided regulations for child safety and gathering personal information from a child under the age of 13 online.

In enacting COPPA, Congress extended the protection only to children under 13, recognizing that children specifically under this age are susceptible and vulnerable to overreaching by marketing and may not understand the safety and privacy issues created by disclosing their personal information online. COPPA applies to “any person who operates a website located on the Internet . . . . who collects or maintains personal information from or about the users of or visitors to such website or online service”. These operators must obtain “verifiable parental consent” before they can collect

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43See Pasierbinska-Wilson, supra note 38 (discerning that originally child pornography was the concern behind the legislation and has evolved over time to marketing concerns).
44See Pasierbinska-Wilson, supra note 38 (presuming parents’ concern for children’s safety online caused the Federal Trade Commission to enforce the Children’s Online Privacy Protection Act).
45See Pasierbinska-Wilson, supra note 38 (citing the act that changed children’s online privacy regulations, known as “COPPA”). In 2000, the Act required commercial websites to obtain parental consent before collecting, using, or disclosing personal information from children under 13. Id. COPPA set forth what a website operator must include in a privacy policy, when and how to seek verifiable consent from a parent or guardian when providing services or interacting with children, and what responsibilities an operator has to protect children’s privacy and safety online, specifically including restriction on the marketing to those under 13. Id.
46See Children’s Online Privacy Protection, 15 U.S.C. § 6501 (1998) (codifying regulations for children and internet privacy). Defining the term “Child” to be an individual under the age of 13 and an “Operator” to be an individual that operates a website located on the internet and collects personal information about the users. Id. at (1).
48See 15 U.S.C. § 6501 (1)-(2) (discussing to whom COPPA applies in the context on website providers).
information from children.49 This consent means “any reasonable effort . . . including a request for authorization for future collection, use, and disclosure . . . to ensure that a parent of a child receives notice of the operator’s personal information collection, use, and disclosure practices . . . before that information is collected from that child.”50 This was the language that was passed by Congress in 1998 and was officially effective on April 21, 2000.51

Between 2000 and 2012, technological advancements, including developments in mobile technology, raised additional concerns for parents and the Federal Trade Commission.52 Mobile technology had not previously been addressed in the original COPPA enactment, and concerns grew about how to apply the enacted rules to mobile gaming operators.53 On December 19, 2012, the Commission issued an amended COPPA rule which took effect on July 1, 2013.54 Due to the advancements in technology from when the rule was first enacted, the amended rule provided for broader protection.55 The amendment broadened the definition of what qualifies as a website or online service directed to children to include the scope of mobile applications.56 The new rule makes it clear

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49See id. at (9) (highlighting the need for parental consent before children can engage in web-based sites and services).

50See id. (defining that parents need to consent before the operators may collect data).

51See Complying with COPPA: Frequently Asked Questions, supra note 47 (clarifying the date the legislation was officially enacted).

52See id. (understanding the need for additional protection). Parents worry about defining the scope of COPPA and whether COPPA will adequately protect their children from pornography and prevent from misrepresenting their ages in order to register for websites with age restrictions. Id.

53See id. (addressing concerns regarding how to apply the legislation to mobile gaming operators).


55See Children’s Online Privacy Protection Rule, 16 C.F.R. § 312.2 (2013) (revising the definition of online service or website); see also id. at § 312.3 (highlighting the general requirements to avoid unfair or deceptive acts regarding children using the internet). The regulation provides that:

It shall be unlawful for any operator of a Web site or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that
that “operator” covers an “operator of a child-directed site or service,” which mobile applications would now fall under.57 It also broadened the definition of personal information to include items such as geolocation and device identifiers, which were not around during the initial enactment.58 The definition of “personal information” now includes “geolocation information and device identification, as well as photos, videos, and audio files that contain a child’s image or voice,” which are all capabilities available in mobile technology.59

C. COPPA Today

As enacted today, the primary goal behind COPPA is to put parents in control of what information is collected from their children
COPPA specifically enacts a notice requirement to ensure that parents can have control of their children’s information being shared online. COPPA clarifies that notice must be sent to parents prior to the collection of any personal information from children. The notice to parents must contain certain key information, and must be within the four corners of the notice itself, and companies cannot simply send a link to an online notice. Companies must also send this notice directly to the parent (an option would be using an email address) and must post a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page of its website or online service. However, while the amended rule clearly lays out how to collect new notice, questions arise concerning the information that companies already collected prior to the amendment that was not considered personal information at that time, but which now is considered personal information under the amended rule.

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60 See Complying with COPPA: Frequently Asked Questions, supra note 47 (focusing on parental concern as the most important driving factor behind legislation).

61 See 16 C.F.R. § 312.4 (identifying the notice requirement of an operator). An “operator”: [must] make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator’s practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented. Id.; see also Complying with COPPA: Frequently Asked Questions, supra note 47 (outlining the notice requirement to include methods for obtaining parental consent, strengthening data security protections, data retention and deletion procedures, and strengthening the Commission’s oversight of self-regulatory safe harbor programs).

62 See Complying with COPPA: Frequently Asked Questions, supra note 47 (clarifying the notice requirement companies must comply with when directing their services to children under the age of 13).

63 See Complying with COPPA: Frequently Asked Questions, supra note 47 (explaining how parents should receive notice that is clear and effective). The notice on the four-corners of the document means that companies must clearly state their policies in a document and cannot cite to other sources or refer to other sources in their notice document. Id.

64 See Complying with COPPA: Frequently Asked Questions, supra note 47 (clarifying the four instances when a direct notice is appropriate including: verifiable consent, notice of a child’s activities, communicating with a child multiple times, and collecting information to protect a child’s safety).

65 See Complying with COPPA: Frequently Asked Questions, supra note 47 (questioning mobile applications directed towards children). Even after the passage
Commission has clarified that companies must obtain notice right away, but only for certain prior information they collected which now falls under the amended rule.\(^{66}\)

**D. Prior COPPA Litigation**

Despite this effort to protect children with the enactment of COPPA, there is a history of companies that allegedly fail to abide by the regulation.\(^{67}\) Less than one year after the original effective date of the legislation, companies were still unsure about how they could effectively comply with COPPA.\(^{66}\)

See *Complying with COPPA: Frequently Asked Questions*, supra note 47 (highlighting the new categories of personal information that fall under the amended COPPA rule and if notice of prior collection needs to be obtained). The FTC provided that:

If you have collected geolocation information and have not obtained parental consent, you must do so immediately . . . [and] [i]f you have collected photos or videos containing a child’s image or audio files with a child’s voice from a child prior to the effective date of the amended Rule, you do not need to obtain parental consent . . . [P]hotos, videos, and audio, [and] any newly-covered screen or user name collected prior to the effective date of the amended Rule is not covered by COPPA, although we encourage you as a best practice to obtain parental consent if possible. A previously-collected screen or user name is covered, however, if the operator associates new information with it after the effective date of the amended Rule . . . Persistent identifiers were covered by the original Rule only where they were combined with individually identifiable information. Under the amended Rule, a persistent identifier is covered where it can be used to recognize a user over time and across different websites or online services. Consistent with the above, operators need not seek parental consent for these newly-covered persistent identifiers if they were collected prior to the effective date of the Rule. However, if after the effective date of the amended Rule an operator continues to collect, or associates new information with, such a persistent identifier, such as information about a child’s activities on its website or online service, this collection of information about the child’s activities triggers COPPA.

\(^{67}\) See *FTC Announces Settlements with Web Sites That Collected Children’s Personal Data Without Parental Permission*, FED. TRADE COMMISSION (Apr. 19, 2001), archived at https://perma.cc/6CA7-YVWD [hereinafter *Web Sites*] (acknowledging the companies that were in violation of COPPA, including The FTC charged Monarch Services, Inc. and Girls Life, Inc., operators of www.girlslife.com;
of COPPA in April 2000, three website operators violated the regulation. Monarch Services Inc., Girls Life Inc., and Looksmart Ltd. were allegedly illegally collecting personal information from children under 13 without parental consent by requiring children to provide personal information when signing up for their services. The FTC alleged that these companies collected personal information from children, including items such as full name, home address, e-mail address, and telephone number. The FTC argued that a look at the companies’ websites revealed there were no posted privacy policies that complied with the Act or required parental consent for children under 13. The companies did not admit to any wrongdoing, and instead decided to settle by paying a combined total of $100,000 in civil penalties for their COPPA violations. Specifically, a spokeswoman for the websites claimed they never retained personally identifying information, and she emphasized that they did not admit liability or wrongdoing under the settlement and that the fines paid “were for settlement purposes only and only to avoid costly and threatened litigation by the FTC.” Additionally, the companies agreed to delete all personally identifiable data since the effective date of COPPA, which they completed shortly after the settlement negotiation.

Shortly thereafter, in February of 2003, the Federal Trade Commission issued the largest civil penalties since the effective

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68 See id. (tracing the first COPPA violations to within the first year of effective enactment).

69 See id. (exposing the first three companies that violated COPPA).

70 See id. (addressing that the specific allegations in violation of COPPA involved the collection of children’s information without the consent of parents).

71 See id. (qualifying the violations as a lack of privacy notice). Privacy notice is required per COPPA to ensure that parents have a say in what information is collected from their children. Id.

72 See Web Sites, supra 67 (stipulating all three defendants agreed to settle the litigation). Settlement was the financially viable option. Id.

73 See William L. Watts, FTC fines firms for privacy violations, MARKETWATCH (Apr. 19, 2001), archived at https://perma.cc/X8ZZ-BA7T (articulating the silence regarding wrongdoing on behalf of the company fined with COPPA violations).

74 See Web Sites, supra note 67 (recognizing that only data gathered after the effective date of the COPPA needed to be deleted, and that consumers are now able to find helpful information about COPPA on the FTC website).
enactment of the COPPA legislation. Mrs. Fields Cookies and Hershey Foods Corporation allegedly failed to obtain verifiable parental consent before collecting online personal information from children under 13. The FTC argued that both companies failed to post privacy policies, failed to provide direct notice to parents about the information they were collecting and how it would be used, and failed to provide a reasonable means for parents to review the personal information collected from their children. Mrs. Fields’ main landing webpage at www.mrsfields.com offered an advertisement to click and sign-up for a birthday club for a child 12 or under, and with this sign-up they provided birthday greetings and coupons for free cookies or pretzels. Hershey maintained more than 30 websites, many of which were candy-related and appealed to children. Hershey engaged children with a “Kidztown” section of their website that required sign-

75 See FTC Receives Largest COPPA Civil Penalties to Date in Settlements with Mrs. Fields Cookies and Hershey Foods, FED. TRADE COMMISSION (Feb 27, 2003), archived at https://perma.cc/FVB9-TTYC [hereinafter Largest COPPA Civil Penalties] (detailing that Ms. Fields Cookies and Hershey Foods Corporation both violated COPPA when they failed to obtain variable parental consent before collecting personal information from children under 13 and failed to post adequate privacy policies).

76 See id. (stipulating both defendants failed to obtain parental consent by employing a method of obtaining parental consent that does not meet the standard delineated under COPPA Rule). It was analyzed that:

These Web pages offered birthday clubs for children 12 or under and provided birthday greetings and coupons for free cookies or pretzels. While Mrs. Fields did not disseminate the information it collected to third parties, the company allegedly collected personal information - including full name, home address, e-mail address and birth date - from more than 84,000 children, without first obtaining parental consent. Hershey operates more than 30 Web sites - many of which are candy-related sites directed to children.

77 See id. (recalling that Mrs. Field and Hershey did not provide direct notice about the information collected or how the information would be used).

78 See id. (reviewing the specific children’s program in question). The information Mrs. Fields obtained included the full name, home address, e-mail address, and date of birth from more than 84,000 children, without first obtaining parental consent. Id.

79 See id. (offering the allure of Hershey’s websites to children). A number of websites use the tactic of offering children-related themes, such as candy, to gain the child’s attention and want them to use the site. Id. Once the children are on these websites, Hershey “allegedly employed a method of obtaining parental consent that does not meet the standard delineated under the COPPA Rule” Id.
up upon accessing this section.\textsuperscript{80} Also, within this section, Hershey advertised sweepstakes and contests where children could click and sign-up in an effort to win prizes and free candy.\textsuperscript{81} Hershey instructed children under 13 to have their parents fill out an online parental consent form.\textsuperscript{82} The FTC alleged Hershey took no additional steps to ensure that a parent or guardian actually acknowledged the consent form.\textsuperscript{83} The FTC also alleged that even if a parent did not submit the consent form, the company still collected items including full name, home address, e-mail address, and age.\textsuperscript{84} Both Mrs. Fields and Hershey did not admit to any wrongdoing, and instead decided to settle the FTC charges, where Mrs. Fields paid civil penalties of $100,000 and Hershey paid civil penalties of $85,000.\textsuperscript{85}

Following the 2003 settlement, there were numerous other companies who incurred online website violations, but it wasn’t until

\textsuperscript{80}See 4 M\textsc{ichael} D. \textsc{s}cott, \textsc{scott n information technology law} § 16.17 (3rd ed. 2019) (describing the method of Hershey attempting to obtain parental consent). Parents were required to sign the parental consent form upon first click on the “Kidztown” section. \textit{Id}.

\textsuperscript{81}See id. (noting that Hershey attempted to collect parental consent for sweepstakes entries). The sweepstakes’ registration page informed children under 13 that they must receive parental consent prior to entering the sweepstakes and a “Parental Consent” form appeared. \textit{Id}. The form asked for the parent’s name, the child’s name, and the home address. \textit{Id}. The parent was then required to click a box to consent. \textit{Id}. After clicking the box, a sweepstakes registration form automatically appeared and asked for additional information such as email address, gender, and age range. \textit{Id}. The FTC showed that there was no way for Hershey to ensure a parent was filling out the form. \textit{Id}. Even if the “Parental Consent” form was left blank, it was still accepted by Hershey. \textit{Id}.

\textsuperscript{82}See Largest COPPA Civil Penalties, supra note 75 (providing Hershey’s guidelines for consent where a “Parental Consent” form needed to be filled out before access to any sweepstakes).

\textsuperscript{83}See Largest COPPA Civil Penalties, supra note 75 (alleging the ineffectiveness of the consent form because there was no way for Hershey to know if a parent had filled out the form or if it was submitted by the child posing as a parent).

\textsuperscript{84}See Largest COPPA Civil Penalties, supra note 75 (highlighting the information obtained from children after the “Parental Consent” form was submitted).

\textsuperscript{85}See Largest COPPA Civil Penalties, supra note 75 (stating that litigation resulted in a settlement with the FTC). The COPPA case was the first of its kind to challenge the manner in which a company obtains parental consent, but it is not stated why the companies chose to settle instead of going to litigation. \textit{Id}. “The settlements bar future COPPA violations, require that the companies delete any information collected in violation of COPPA, require civil penalty payments, and contain certain record-keeping requirements to allow the FTC to monitor the companies’ compliance with the order.” \textit{Id}. 
2011 when the Federal Trade Commission brought its first COPPA case against a mobile application. The Federal Trade Commission charged W3 Innovations with violations of COPPA. Many of W3 Innovations’ apps were specifically directed to children, and were listed in the Games-Kids section of Apple’s App Store. The FTC alleged that W3 collected and maintained thousands of email addresses through its apps and allowed children under 13 to publicly post personal information on message boards, all without verifiable parental consent. W3 did not argue their case, and instead decided to settle, where the FTC received $50,000 in civil penalties and W3 agreed to delete all information about children collected through its apps, which it did shortly after the settlement.

More recently, in 2015, two additional application developers were charged with COPPA violations. These cases were the first in

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86See Ronald Y. Rothstein, FTC Brings First COPPA Case Against Mobile Apps, WINSTON & STRAWN LLP (Aug. 15, 2011), archived at https://perma.cc/U7ZK-ZM3L (recalling the first COPPA violation case involving the mobile gaming segment of the gaming industry).

87See Mobile Apps Developer Settles FTC Charges It Violated Children’s Privacy Rule, FED. TRADE COMMISSION (Aug. 15, 2011), archived at https://perma.cc/ZMU3-H5F4 [hereinafter Mobile Apps] (discussing how the company was charged with COPPA violations). According to the complaint, W3 did not provide notice of their collection practices and did not obtain verifiable parental consent before collecting and disclosing personal information from children. Id.

88See id. (pointing to the apps that were directed towards children). The applications targeted to children included Emily’s Girl World, Emily’s Dress Up, Emily’s Dress Up & Shop, and Emily’s Runway High Fashion. Id. The apps allowed children to play games such as Cootie Catcher and Truth or Dare, and to create virtual models and design outfits. Id. The apps also encouraged children to email “Emily” their comments about the games and submit blogs to “Emily’s Blog” via email. Id. There have been more than 50,000 downloads of these apps. Id.

89See id. (listing the specific COPPA violations). In addition to collecting and maintaining children’s email addresses, the FTC alleged that the defendants allowed children to publicly post information on message boards and blogs through the “Emily” games. Id. These postings did not require any parental consent at all. Id. Children were free to share their email address and information on the blogs and message boards without any parental consent. Id.

90See id. (summarizing the outcome of the litigation); Kristen J. Mathews, FTC Fines First Mobile App Developer for COPPA Violation, PROSKAUER PRIVACY LAW BLOG (Aug. 18, 2011), archived at https://perma.cc/TSSC-U955 (detailing agreements W3 made as part of its settlement with the FTC).

91See Two App Developers Settle FTC Charges They Violated Children’s Online Privacy Protection Act, FED. TRADE COMMISSION (Dec. 17, 2015), archived at
which the Federal Trade Commission alleged that companies allowed advertisers to use the collected information to advertise to children.92 In charges against LAI Systems LLC, the FTC alleged that the company created apps directed to children, including My Cake Shop, My Pizza Shop, and Hair Salon Makeover, which allowed third-party advertisers to collect personal information from children in the form of “persistent identifiers,” which allow companies to track individual users’ information and data across different gaming platforms.93 The FTC argued that LAI did not give notice or receive consent from parents about this collection process.94 Similarly, in charges against Retro Dreamer, the FTC argued that the company created apps directed to children, including Ice Cream Jump, Happy Pudding Jump, and Sneezies, which also allowed third-party advertisers to collect personal information through persistent identifiers without parental consent or notice.95 As a result, LAI and

https://perma.cc/RLN7-AJU8 [hereinafter Two App Developers] (highlighting more recent litigation involving companies such as LAI Systems, LLC and COPPA).

92See id. (describing the first litigation involving the collection of information for the purpose of administering it to advertising companies).
93See id. (noting how the companies used persistent identifiers to collect information for advertisers); see also Jessica Davies, WTF is a persistent ID?, DIGIDAY (Mar. 8, 2017), archived at https://perma.cc/ZS8H-VZKU (defining persistent identifier).

A persistent identifier is: an identifier that can provide a single view of an individual across numerous devices — across desktop, mobile web, and in-app, without duplication. This ID is formed using deterministic data . . . which is gathered from log-ins. If a person logs in to a social media or email account, or any online account, and remains logged-in, they can then be recognized wherever they are on the web or mobile. So for marketers, better data.

Id.

94See Two App Developers, supra note 91 (pointing to the lack of parental consent). The company did not maintain any policies to obtain parental consent. Id. They were collecting data from children the entire time of operation without receiving parental consent. Id.

95See Two App Developers, supra note 91 (stating that “[t]wo app developers will pay a combined $360,000 in civil penalties as part of settlements with the Federal Trade Commission over charges they violated the Children’s Online Privacy Protection Act”). These ad networks would then tailor their ads and marketing to children based on the information that they purchased from Retro Dreamer. Id.; see also Allison Grande, FTC Expands Child Data Protections In Mobile App Action, LAW360 (Jan. 6, 2016), archived at https://perma.cc/5ZWW-7UVR (discussing the similar charges against LAI and Retro Dreamer). Retro Dreamer was also selling the information they collected to third-party ad networks for a fee, just like LAI. Id.
Retro Dreamers did not argue their cases and instead settled with the FTC for $60,000 in civil penalties and $300,000 in civil penalties, respectfully. 96  

It is important to understand that with all these settlement situations, the Federal Trade Commission is not finding or ruling that the defendants have actually violated the law. 97 The Federal Trade Commission only authorizes the filing of a complaint when it has “reason to believe” that the law has been violated and the FTC believes the violation affects the public. 98 This consent decree provided by the defendants is for settlement purposes only and does not constitute an admission by the defendants of a law violation. 99 Therefore, while there are allegations against these companies, they are never actually found to be “guilty” of any COPPA violations. 100  

Since COPPA’s most recent amended rule, parents have expressed concern regarding the cases settled by the FTC and about the effectiveness of COPPA legislation. 101 As evident from examples of COPPA settlements, penalties tend to remain insignificant in the
grand scheme of a company’s business operations.\textsuperscript{102} Parents of several consumer privacy advocacy groups have requested the FTC to consider revisions to COPPA and the fines assessed when companies have alleged COPPA violations.\textsuperscript{103} Parents have expressed that a higher burden must be placed on website and mobile gaming operators, potentially through more significant fines, in order to force companies to actually abide by COPPA requirements.\textsuperscript{104} Additionally, parents want the FTC to better monitor companies’ COPPA policies and suggest that the FTC enforce better notice, clearer consent, and easier access to operators’ information policies and security practices.\textsuperscript{105} Overall, with the high concern for children’s safety, parents urge the FTC and lawmakers to take COPPA violations seriously, hence the current Disney lawsuit.

III. Premise

A. Mobile Gaming

Since the introduction of the first mobile-app store in 2007, the global gaming industry has seen consistent revenue growth.\textsuperscript{106} In 2016, the revenue from gaming applications was around $40 billion

\textsuperscript{102}See FTC Increases Maximum Civil Penalties for HSR Act, COPPA, and Other Violations from $16,000 to $40,000, WILSON SONSINI GOODRICH & ROSATI (July 5, 2016), archived at https://perma.cc/SDE8-9KGZ (depicting how FTC COPPA cases are regulated under civil actions and companies that violate COPPA are assessed civil penalties). In terms of COPPA violation fines, the maximum civil penalty per COPPA violation was $16,000; as of August 2016, this amount has been raised to $40,000 per violation. \textit{Id.} Typically, companies achieve revenues in the billions, and these fines are extremely small percentages of their overall profits. \textit{Id.}

\textsuperscript{103}See Matecki, \textit{supra} note 101, at 397 (criticizing COPPA regulations as ineffective means of ensuring the protection of children’s personal information online).

\textsuperscript{104}See Matecki, \textit{supra} note 101, at 397 (addressing the financial benefit companies receive from targeted market efforts).

\textsuperscript{105}See Matecki, \textit{supra} note 101, at 397 (arguing for better monitoring of company’s COPPA policies to ensure that children are protected when using their web-based services).

\textsuperscript{106}See Dean Takahasi, \textit{Mobile game revenue will grow 66\% from $38 billion in 2016 to $65 billion in 2020}, NEWZOO (Apr. 26, 2017), archived at https://perma.cc/R9P3-VC5V [hereinafter \textit{Mobile Games Revenue}] (depicting revenue growth in the mobile gaming industry).
worldwide.\textsuperscript{107} By 2020, it is projected that this revenue will exceed $65 billion.\textsuperscript{108} At the end of 2016, 2.3 billion consumers actively used a smartphone, which equates to about 31 percent of the total population.\textsuperscript{109} By 2020, it is projected that 3.6 billion smartphone users, close to half of the world’s population, will actively use a smartphone.\textsuperscript{110} Specifically focusing on children in the U.S., spending on kids’ mobile games makes up 9.3 percent of all mobile gaming revenue, which equates to approximately $38,781,000 out of a total $417,000,000.\textsuperscript{111} This revenue is supported by kids under 13 spending an average of two hours per day on mobile devices.\textsuperscript{112}

\textbf{B. The Business of Disney}

Disney operates in four business segments: Media Networks, Parks and Resorts, Studio Entertainment, and Consumer Products & Interactive Media.\textsuperscript{113} The Consumer Products & Interactive Media segment accounts for more than $5.52 billion of Disney’s total revenue.\textsuperscript{114} Under this operating segment are four main lines of

\begin{itemize}
\item \textsuperscript{107}See id. (highlighting annual revenue from 2016 and stating that there has been consistent growth year after year with the advancements in technology).
\item \textsuperscript{108}See id. (projecting revenue will almost double from 2016 to 2020).
\item \textsuperscript{109}See id. (quantifying the number of worldwide users that actively use a smartphone).
\item \textsuperscript{110}See id. (estimating the availability of smartphones by 2020 will dramatically surpass any previous numbers).
\item \textsuperscript{111}See Jeff Grubb, Kids’ gaming makes up nearly 8% of mobile game spending worldwide, VENTUREBEAT (Aug. 18, 2015), archived at https://perma.cc/5TJV-9GGL (graphing the spending on kids’ mobile games, which was 9.3% of the mobile game market share and generated $417 million dollars in revenue).
\item \textsuperscript{112}See id. (stating that spending is not necessarily on free-to-play games, rather it is premium-priced games with upfront costs that account for the industry’s revenue). COPPA limits the data that games can collect off of children under 13. \textit{Id.} Additionally, parents tend to like premium-priced games because kids are less likely to bother them about buying “energy” or “gold” which are typical purchases that need to be made in games that are free to download. \textit{Id.; see also} Tofel, supra note 36 (summarizing the hours kids under 13 spend per day on mobile devices). Inferring that the more often a kid plays an application, the more likely they are to want a premium version of a game. \textit{Id.}
\item \textsuperscript{113}See The Walt Disney Company Reports Fourth Quarter and Full Year Earnings for Fiscal 2016, DISNEY (Nov. 10, 2016), archived at https://perma.cc/C6FQ-SCWM (summarizing the operating earnings that make up The Walt Disney Company).
\item \textsuperscript{114}See id. (quantifying the 2016 year-end fiscal results). 
\end{itemize}
business: Licensing; Retail; Games and Apps; and Content. In the Games and Apps division, Disney internally develops, licenses, and co-develops mobile products for all ages. These mobile products, primarily consisting of mobile games, are the spotlight of the recent 2017 class action lawsuit.

Over the past 30 years, Disney’s game division has paralleled shifts in the gaming industry, as it has adapted to technological advancements. Since 2007, Disney has invested its resources in mobile gaming to mimic the trend in the gaming industry. Disney’s games are downloaded nearly 1 million times per day and add about 70 million unique users per month in their total network of all applications they own. Disney attempts to bring its magic to games. For Disney, it is all about storytelling. Disney knows that is why people show up to the theater for the latest Disney movie release. Disney also knows that is why consumers download the

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115 See Disney Consumer Products and Interactive Media, About Us, DISNEY (2017), archived at https://perma.cc/LT6N-ZZ54 (outlining the operations that are categorized under Consumer Products and Interactive Media).

116 See id. (acknowledging their fan-base has a broad age-range from young child to old adult).

117 See Fung & Shaban, supra note 5 (briefing readers on the components of the class action lawsuit against Disney); see also Disney, iTUNES (Feb. 24, 2018), archived at https://perma.cc/XRS8-KFTX (showing apps that Disney maintains). These apps include mobile games, apps to shop Disney products, apps to watch any of the television shows on Disney television networks, and apps to access theme park information. Id.

118 See Willie Clark, Disney’s Many, Many Attempts at Figuring Out the Gaming Industry, POLYGON (Nov. 18, 2017), archived at https://perma.cc/RT4F-VY3E (discussing the development of Disney’s gaming segment).

119 See id. (emphasizing Disney’s adaptability). With children spending most of their time playing games on mobile devices, Disney has been quick to realize the profit potential of expanding their mobile gaming segment. Id. Disney invests in research and development of mobile gaming products to give them an edge in the mobile gaming industry. Id.

120 See Jeff Grubb, How Disney’s games are getting nearly 1M downloads a day and 70M unique users a month, VENTUREBEAT (Mar. 20, 2015), archived at https://perma.cc/B65Q-UZT4 (providing numeric details on Disney’s users). Disney experiences consistent growth in its mobile applications. Id.

121 See Clark, supra note 118 (noting how Disney quickly shifted focus to bringing its magical image to the mobile gaming segment).

122 See Clark, supra note 118 (focusing on the treasured Disney stories consumers know and love).

123 See Clark, supra note 118 (understanding the allure of magic).
game apps based on the movies they watch.\textsuperscript{124} Disney wants to keep working on storytelling, and to do so it must expand its mobile gaming segment.\textsuperscript{125} However, as Disney has expanded its mobile gaming segment, issues have arisen concerning its privacy protection practices specifically relating to COPPA.\textsuperscript{126}

\textit{C. Disney Mobile Gaming}

Some of Disney’s most popular mobile apps include Princess Palace Pets, Where’s My Water, Moana Island Life, Beauty and the Beast, Frozen Free Fall, and Toy Story: Story Theater.\textsuperscript{127} While Disney has stated that their games are for “fans of all ages”, most users playing their mobile games are children under the age of 13.\textsuperscript{128} With many of its users under the age of 13, Disney mobile apps are regulated under COPPA.\textsuperscript{129} This means that Disney, being an operator of mobile applications played by users under the age of 13, can collect items such as geolocation, name, and address from users under 13 only after parents have consented.\textsuperscript{130} Disney also outsources its mobile application development to three software companies: Upsight, Unity,

\textsuperscript{124}See Clark, supra note 118 (reasoning that consumers love Disney movies and stories and will download games that are based on these items).
\textsuperscript{125}See Clark, supra note 118 (highlighting that profit potential is in mobile gaming).
\textsuperscript{126}See Fung & Shaban, supra note 5 (evidencing the privacy concerns that led to the class action lawsuit against Disney). Privacy concerns are specifically related to COPPA. Id. Parents are worried that their children’s information is being shared throughout the web for a profit, all without their consent. Id.
\textsuperscript{127}See Fung & Shaban, supra note 5 (listing popular Disney mobile games that have been named in the class action litigation).
\textsuperscript{128}See Fung & Shaban, supra note 5 (recognizing that children under the age of 13 account for the users playing the apps in question); see also Danielle Paquette, The unexpected way Disney princesses affect little boys, WASH. POST (June 22, 2016), archived at https://perma.cc/4NJA-DB65 (studying 200 children, 96% of girls and 87% of boys had consumed some sort of Disney princess-centric media). These numbers allude to the target market of young children who play Disney’s mobile games. Id.
\textsuperscript{129}See Children’s Online Privacy Protection, supra note 46 (codifying that children under 13 are protected under COPPA regulations).
\textsuperscript{130}See Children’s Online Privacy Protection, 15 U.S.C. § 6501 (1998) (providing the term “verifiable parental consent,” which is defined as “any reasonable effort . . . . to ensure that a parent of a child receives notice of the operator’s personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure . . . . before that information is collected from that child”).
and Kochava, due to their specialization in mobile gaming. These companies who work with Disney to create mobile games also fall under the COPPA regulation as third-parties who are subject to obtaining parental consent before tracking data of users under 13.

D. Disney’s Lawsuit

As of May 2019, in Rushing Et. Al v. The Walt Disney Company Et. Al, a class of parents, whose children under age 13 play Disney mobile games, claim that Disney and these third-party companies have violated COPPA by not receiving proper verifiable parental consent before collecting data from children. Seeing as children under the age of 13 are playing Disney’s games, the class action litigation was brought by parents of children “who, while playing online games via smart phone apps, have had their personally identifying information exfiltrated by [Disney] and its partners, for future commercial exploitation, in direct violation of the federal Children’s Online Privacy Protection Act (COPPA).” The plaintiffs seek to obtain an injunction for Disney to cease these practices, sequester illegally obtained information from their children, and receive damages.

Disney developed the mobile game app Princess Palace Pets which has been marketed on app stores since 2013. This app was

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131 See Charlie May, Big Brother Mickey: Class-action lawsuit alleges Disney spied on children through several apps, SALON (Aug. 9, 2017), archived at https://perma.cc/Y3XA-Q3YF (stating the three software companies who work with Disney to create mobile applications). These companies are privy to mobile game development techniques. Id.
132 See 15 U.S.C. § 6501 (including third-parties who are involved in software and marketing under the definition of “operator”). As a third-party who provides services to a company directed towards children, they must also be regulated under COPPA. Id.
134 See Complaint, supra note 133, at 37 (accusing Disney and third-party companies of improperly collecting data from children without verifiable parental consent in violation of COPPA).
135 See Complaint, supra note 133, at 1 (articulating Disney’s violation of COPPA).
136 See Complaint, supra note 133, at 1 (contending that the plaintiffs are entitled to remedies at law).
137 See Complaint, supra note 133, at 36 (detailing the apps at issue in the lawsuit against Disney). Disney’s Princess Palace Pets and the other Game Tracking Apps
the first named in the lawsuit, and after plaintiffs’ investigation, over forty other Disney apps (“Game Tracking Apps”) have also been named.\textsuperscript{138} On January 14, 2014, Ms. Rushing, the initial plaintiff to the lawsuit, downloaded Princess Palace Pets onto her daughter’s mobile device.\textsuperscript{139} Thereafter, plaintiff’s daughter frequently played Disney’s Princess Palace Pets on this device.\textsuperscript{140} It is alleged that Disney embedded advertising tracking software which collected, disclosed, or used personal information and persistent identifiers of the daughter, including location, name, address, and email address.\textsuperscript{141} Plaintiff asserts that Disney did not collect her daughter’s personal information to provide support for internal operations, but instead to profile her daughter for commercial gain by selling the collected data.

are directed to children under age 13. \textit{Id.} at 44. For example, Princess Palace Pets is a game in which users can groom, bathe, accessorize, and play with about 10 different pets. \textit{Id.} In the Apple Store, Google Play Store, and Amazon, Princess Palace Pets is rated as a game for children younger than 5, or for “everyone” or “all ages.” \textit{Id.} at 45.

\textsuperscript{138}See Complaint, \textit{supra} note 133, at 9-10 (highlighting more than 40 apps in question that obtained personal information of children without parental consent). The apps include:

- AvengersNet, Beauty and the Beast: Perfect Match, Cars
- Lightening League, Club Penguin Island, Color by Disney, Disney
- Color and Play, Disney Crossy Road, Disney Dream Treats,
- Disney Emoji Blitz, Disney Gif, Disney Jigsaw Puzzle!, Disney
- LOL, Disney Princess: Story Theater, Disney Store Become,
- Disney Story Central, Disney's Magic Timer by Oral-B, Disney
- Princess: Charmed Adventures, Dodo Pop, Disney Build It
- Frozen, DuckTales: Remastered, Frozen Free Fall, Frozen Free
- Fall: Icy Shot, Good Dinosaur Storybook Deluxe, Inside Out
- Thought Bubbles, Maleficient Free Fall, Miles from
- Tomorrowland: Missions, Moana Island Life, Olaf’s Adventures,
- Palace Pets in Whisker Haven, Sofia the First Color and Play,
- Sofia the First Secret Library, Star Wars: Puzzle Droids™, Star
- Wars™: Commander, Temple Run: Oz, Temple Run: Brave, The
- Lion Guard, Toy Story: Story Theater, Where’s My Water?,
- Lite/ Where’s My Water? Free, Zootopia [and] Crime Files:
- Hidden Object.

\textit{Id.} at 9-10.

\textsuperscript{139}See Complaint, \textit{supra} note 133, at 9-10 (pointing out the Disney mobile games that were downloaded).

\textsuperscript{140}See Complaint, \textit{supra} note 133, at 23 (distinguishing how plaintiff’s daughter got access to the app by downloading it on her mobile device).

\textsuperscript{141}See Complaint, \textit{supra} note 133, at 11 (alleging Disney implements tracking software in mobile applications).
to third-party advertisers.\textsuperscript{142} Also, plaintiff alleges that Disney never asked Ms. Rushing for her verifiable parental consent, as required by COPPA.\textsuperscript{143}

So how specifically is Disney allegedly violating COPPA?\textsuperscript{144} Typically, the app developer (such as Disney or one of its third-party affiliates) installs a software development kit onto one of its apps, which collects persistent identifiers.\textsuperscript{145} The persistent identifiers collect information such as app usage, geographic location (which is likely to include home address), and internet navigation; anytime a user accesses the internet, their navigation is tracked and monitored.\textsuperscript{146} Then, this information is packaged into a profile and sold to an advertising network (“Ad Network”).\textsuperscript{147} An Ad Network will store the gathered information on physical servers.\textsuperscript{148} Ad Networks or other third-parties can then buy and sell data and exchange databases amongst each other, and the data is then analyzed.\textsuperscript{149} How, when, and why a child uses her mobile device, along with demographic and psychographic inferences that can be drawn therefrom, become financially valuable.\textsuperscript{150} The smart-device and specific user will then

\textsuperscript{142}See Complaint, \textit{supra} note 133, at 10 (noting the concern for commercial exploitation in regard to children).

\textsuperscript{143}See Complaint, \textit{supra} note 133, at 15 (violating the verifiable parental consent requirement of COPPA). The Plaintiff claims Disney did not initiate any type of parental consent collection process and has been collecting data from under 13 users in violation of COPPA. \textit{Id.}

\textsuperscript{144}See Complaint, \textit{supra} note 133, at 5 (questioning how Disney has violated COPPA). Disney is using their apps for commercial exploitation. \textit{Id.}

\textsuperscript{145}See Complaint, \textit{supra} note 133, at 2 (noting the software that is embedded in the applications). Software has been embedded in the apps to specifically track and collect data. \textit{Id.}

\textsuperscript{146}See Complaint, \textit{supra} note 133, at 4 (describing the information collected by the embedded software).

\textsuperscript{147}See Complaint, \textit{supra} note 133, at 4 (defining who receives the collected information). Disney is packaging the data and selling it. \textit{Id.}

\textsuperscript{148}See Complaint, \textit{supra} note 133, at 5-6 (determining where the data is stored). Data is stored on large servers. \textit{Id.}

\textsuperscript{149}See Complaint, \textit{supra} note 133, at 5-6 (recognizing the business of buying and selling consumer data). Data can essentially be bought or sold specifically to any large company who is in the practice of buying or selling data. \textit{Id.}

\textsuperscript{150}See Complaint, \textit{supra} note 133, at 5-6 (acknowledging the financial benefits for companies to buy and sell data). Disney can collect data from children and sell it to ad companies for a high profit margin since the information is very valuable for the ad companies. \textit{Id.} These ad companies can send ads to consumers and children based on the likelihood that consumers will purchase the products they are offering.
receive targeted ads based on their profile in an attempt for companies to exploit potential profits.  

As of May 2019, an answer from Disney as to the plaintiff’s allegations has not been published. A representative for Disney did, however, make a brief comment to the press. The spokesperson stated that Disney has “a robust COPPA compliance program.” The representative also claimed that Disney “maintain[s] strict data collection and use policies for Disney apps created for children and families.” The Disney spokesperson did not claim they were violating COPPA, but instead claimed that the plaintiffs’ complaint “is based on a fundamental misunderstanding of COPPA principles, and [they] look forward to defending this action in court.” The section on Disney’s website regarding COPPA was updated on October 16th, 2017, two months after the complaint filed by plaintiffs, and the policy states that Disney will email parents if parental consent is required. Over the coming months, this class action litigation will continue to unfold, and Disney, along with other companies whose practices fall under COPPA, should be aware of their privacy protection and parental consent policies.

Id. While being financially valuable to the ad companies, this can be attributable to a significant invasion of privacy for the consumer. Id.

151 See Complaint, supra note 133, at 10-11 (concluding that consumers are more likely to purchase goods and services that are specifically targeted to their habits and preferences).

152 See May, supra note 131 (establishing that one of the only published court filings is the plaintiffs’ complaint). As of early 2019, the case has not gone to trial. Id.

153 See May, supra note 131 (contending that a spokesperson for Disney did make a brief statement to the press when asked about the allegations).

154 See May, supra note 131 (supporting Disney’s established COPPA policies). Disney reps believe Disney has enacted correct COPPA policies. Id.

155 See May, supra note 131 (declaring Disney’s policies are accurate and appropriate).

156 See May, supra note 131 (dismissing the COPPA allegations and arguing that plaintiffs do not have an accurate understanding of COPPA).

157 See Children’s Privacy Policy, DISNEY (Oct. 16, 2017), archived at https://perma.cc/965H-5HNR (outlining Disney’s COPPA parental consent practices). In the event Disney wants to collect personal information, they will “first seek a parent or guardian’s consent by email. In the email [they] will explain what information [they] are collecting, how [they] plan to use it, how the parent can provide consent, and how the parent can revoke consent. If [they] do not receive parental consent within a reasonable time, [they] will delete the parent contact information and any other information collected from the child in connection with that activity.” Id.
IV. Analysis

In today’s technological world, privacy concerns are of the utmost importance. With a significant number of children using the internet, concerns arise surrounding their wellbeing and security. In the early years of the internet, the U.S. saw an outcry from parents concerning children’s safety. With this outcry came COPPA, and Disney needed to adapt. Twenty-five years later, as technology is paramount to daily living, it is of the utmost importance that Disney and other companies adhere to the policies and procedures set in place by governmental regulations to provide a safe internet environment for children.

It is likely that Disney has violated COPPA, however, as seen from other companies with similar violations, the potential outcome of the 2017 class action lawsuit is a financial settlement. As evidenced

See Scott, supra note 9 (discussing that misuse of information significantly attributes to the fear of using the internet, specifically for children).

See Scott, supra note 80, at 5 (positing that as technology becomes increasingly accessible, the potential for misuse and invasion of privacy contributes to the growing concern of protection for children using the internet).

See Pasierbinska-Wilson, supra note 38 (examining the origins of the COPPA regulations and how original privacy protection was enacted to protect against child predators, but as technology has evolved, the focus has shifted to protecting children and their personal information for re-sale and targeted advertising).

See Clark, supra note 118 (analyzing Disney’s attempts to keep up with the gaming industry and target the age group of children under 13 to churn a profit). Once again, this alludes to Disney forgoing collecting parental consent to increase their profits through selling data tracked and collected from consumers. 

See Complying with COPPA, supra note 47 (focusing on the idea behind COPPA as enacted today, that companies are using information they collect to sell it to third-party advertisers and increase their profit potential, without necessarily focusing on the privacy implications).

See Web Sites, supra note 67 (providing examples of companies agreeing to financial settlement when charged with violating COPPA); see also Largest COPPA Civil Penalties, supra note 75 (warning that COPPA violations will result in expensive financial settlements); Mobile Apps, supra note 87 (pointing to the FTC’s first case dealing with apps, which ended in a $50,000 settlement); Two App
by Disney’s policies and practices, it attempts to appeal to “fans of all ages”, and many times these fans are under 13 years old. While the profit potential from mobile game sales to fans under 13 years old puts Disney in the top of the Fortune 500 companies, these profits come with an added cost: the cost of privacy protection.

Due to the heightened awareness of internet privacy protection, parents are actively monitoring their children’s internet usage by restricting apps their children use, placing child protection software on devices, and also being more aware of what their children download. This is evidenced by the class action lawsuit against Disney. Parents are concerned that smartphones, tablets, and other internet-connected gaming devices are intruding upon the privacy and safety of children. It is more than simply collecting data such as a username or email address. Plaintiffs’ lawsuit alleges that Disney collects

Developers, supra note 91 (reporting that two app developers were ordered to pay a combined total of $360,000 as settlements with the FTC).

164 See Fung & Shaban, supra note 5 (highlighting the fan-base that Disney reaches, including children under age 13, the age group discussed in COPPA regulations).

165 See #176 Disney, FORTUNE GLOBAL 500 (Jan. 25, 2019), archived at https://perma.cc/W84T-2BKF (ranking Disney at 176 on the Fortune Global 500 list). Disney’s rank on the Global 500 list alludes to the need for Disney to churn a profit at any cost, even if that means the privacy protection of children. Id. Disney would benefit by collecting data from children and selling it to ad-networks without having to be inhibited by parents. Id.; Complaint, supra note 133, at 6 (discussing Disney’s commercially exploitive use of sharing children’s information with third parties without parental consent).

166 See Pasierbinska-Wilson, supra note 38 (setting forth the heightened scrutiny of businesses who provide internet-based services to children under 13).

167 See Fung & Shaban, supra note 5 (offering the information surrounding the class action litigation filed against Disney for violating children’s privacy protections by illegally collecting data without first obtaining parental consent, all in direct violation of COPPA). As noted, COPPA regulations require businesses who provide internet-based services to children under 13 years old to collect verifiable parental consent about the business’ data collection procedures. Id.

168 See Fung & Shaban, supra note 5 (summarizing the allegations in the class action litigation and highlighting the justification for requiring parental consent before collecting any data).

169 See Fung & Shaban, supra note 5 (stressing the need for parental consent when it comes to businesses collecting data from children, particularly information containing personal information, geolocation, and home address, which are all safety and privacy concerns). If Disney did not obtain verifiable parental consent prior to collecting data that can be bought or sold, they are in direct violation of COPPA. Id.; see also Children’s Online Privacy Protection Rule: A Six-Step Compliance Plan for Your Business, supra note 13 (setting forth what constitutes a COPPA violation).
more obscure data, like a smartphone’s persistent identifiers which are unique to individual mobile devices and digital files. At a first glance, this collection process does not seem like a significant issue, but when the data that is tracked can be bought or sold to other companies it becomes a significant invasion of privacy. The real issue for Disney is that children, who do not necessarily understand or are not able to consent to the collection, are unknowingly sharing their information. This is why Disney falls under COPPA: it is the responsibility of Disney to notify parents about the collection. Disney must allow parents who have the knowledge and maturity to consent to the collection process and make the decision for their child. It cannot be a unilateral decision of Disney to invade privacy and track data without adhering to policies and procedures.

Disney ultimately would benefit by collecting data from children and selling it to ad-networks without having to be inhibited by parents. Parents may not consent to the collection process and therefore lessen overall profit potential for Disney who could

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170 See Complaint, supra note 133, at 4 (stipulating Disney’s use of persistent identifiers). Parents do not want a child’s geolocation, home address, habits, and links they click on to be tracked and monitored and later packaged and sold for commercial exploitation. Id.

171 See Complaint, supra note 133, at 5 (describing the information collected by the embedded software causes a concern for parents because businesses are essentially spying on the children and monitoring their habits).

172 See Complaint, supra note 133, at 6 (making the point that children cannot consent). It is the parent who should have the control over the child’s internet habits. Id.

173 See Complaint, supra note 133, at 6-7 (stressing the importance of COPPA regulations and that Disney must adhere to the consent policies required by COPPA). Disney cannot evade COPPA regulations for commercial exploitation. Id.

174 See Complaint, supra note 133, at 6 (alluding to the fundamental idea that children do not possess the capability to consent on their own, and that is why adherence to COPPA regulations is so important, because parents have the sophistication to monitor their children’s internet-usage and must be afforded the opportunity to consent).

175 See Complaint, supra note 133, at 10 (subjecting Disney to scrutiny for unilaterally collecting data from children without properly addressing COPPA regulations and the need for parents to have control over their children’s internet usage).

176 See Fortune 500, supra note 4 (quantifying Disney’s profits). This alludes to Disney wanting to collect data in order to sell it and make a profit. Id; see also See The Walt Disney Company Reports Fourth Quarter and Full Year Earnings for Fiscal 2016, DISNEY (Nov. 10, 2016), archived at https://perma.cc/C6FQ-SCWM (providing the full year results of Disney profits from fiscal year 2016).
potentially sell the collected data.177 This is the fundamental idea behind the lawsuit: Disney, being an entertainment giant, is illegally collecting data from children by evading the COPPA government rules and regulations, just to turn a profit.178

While the response from Disney has been minimal, it is hard to decipher how the company plans to defend the lawsuit.179 A Disney representative has alluded to the belief that their privacy policies and procedures adhere to COPPA regulations, yet, as seen before with many other companies, COPPA policies may not be perfect.180 However, many children and adults have faith in Disney.181 After all, it is one of the most magical companies on earth.182 Disney’s gaming apps have been downloaded millions of times, the number of daily app users continues to rise, and it continues to top the charts as an entertainment giant.183

If Disney were to defend the lawsuit, it would need to speak of its reputation and recognition.184 If there is potential that a court could conclude that Disney did violate COPPA, it would be a necessity to

177See The Walt Disney Company Reports Fourth Quarter and Full Year Earnings for Fiscal 2016, supra note 176 (demonstrating strong revenue growth and the largest quarter Disney had seen in its history).

178See Complaint, supra note 133, at 9 (suggesting Disney may disregard COPPA regulations because the profit potential they receive from selling the data that they allegedly illegally collect far exceeds any concern for COPPA, children’s privacy, and the right of parents to monitor their children’s activity online).

179See May, supra note 131 (quoting a representative for Disney who dismissed the COPPA allegations and believes that Disney may not be at fault and may not have violated COPPA).

180See May, supra note 131 (relying on the statement from Disney’s representative which alludes to Disney’s belief that they are not at fault and the plaintiffs do not accurately understand COPPA). This may be their defense to the class action litigation if brought to trial. Id.

181See Grubb, supra note 120 (understanding the fan base of Disney includes children and adults). This large fan base keeps Disney as one of the most beloved and profitable companies. Id.

182See Grubb, supra note 120 (explaining that Disney is aware of what draws fans in to see their products, and will further take their strength of “story telling” to new ventures, while ensuring it continues to bring in consumers).

183See Grubb, supra note 120 (quantifying the growing number of users who participate in Disney’s mobile gaming and this growing number of user’s supports the reputation and recognition of Disney).

184See Grubb, supra note 120 (recognizing that it is the past quality of services and products which make Disney an entertainment giant in its industry).
avoid bad press. The feelings of fun and excitement that Disney evokes would need to be at the forefront of their business mission, and Disney could not allow a lawsuit to disrupt their image. At that point, it would be advantageous to pay FTC fines through a settlement, and financial compensation to the injured families, both to avoid litigation and a depredation to their business and profits. It has been done before; many large companies that fall under COPPA have opted for a settlement. As seen from previous examples with companies like Hershey, Mrs. Fields, and W3 Innovations, when alleged of COPPA violations and illegally collecting data from children under 13 without parental consent, these companies have paid FTC assessed fines and worked to restructure their data collection processes. More importantly, with a settlement option, these companies have not admitted fault. The settlement process does not attribute fault to the defendants in the litigation.

185 See About, supra note 2 (harboring on the importance of Disney’s reputation and recognition in the industry, and its mission to be at the forefront of creative content creation). Bad press can be detrimental to Disney’s pride and reputation in the industry, and by inducing a settlement, it would allow Disney to maintain its wholesome image in the industry. Id.

186 See Grubb, supra note 120 (highlighting Disney’s quality-over-quantity business strategy); see also About, supra note 2 (articulating the positive image Disney attempts to portray). A significant lawsuit could change this positive image. Id.

187 See Web Sites, supra note 67 (exemplifying the benefits of lawsuit settlements in comparison to lengthy litigation). Numerous settlements have required companies to pay civil penalties for COPPA violations in addition to case-specific limitations and restrictions. Id.; see also About, supra note 2 (considering the importance of name and reputation for Disney, and the impact they have on Disney’s profits and financial superiority in the industry). Disney is built on its allure and reputation, and the potential to lose consumers could have a financial impact on its bottom-line profits. Id.

188 See Web Sites, supra note 67 (citing companies that have avoided litigation and settled COPPA violations with a financial settlement). As seen from other companies that provide internet-based services to children under age 13, COPPA violation can incur FTC penalties. Id.

189 See Largest COPPA Civil Penalties, supra note 75 (detailing the penalties that the FTC imposes on companies to prevent future COPPA violations); see also Web Sites, supra note 67 (addressing companies that provided internet-based gaming to children under 13 and their violations of COPPA concluding with a financial settlement).

190 See Web Sites, supra note 67 (contending that these companies alleged to be in violation of COPPA have not necessarily admitted fault through the settlement process).

191 See Web Sites, supra note 67 (clarifying that settlement is not a court decree, and a defendant has not admitted fault to the allegations by paying fines to the FTC). As
This is another reason settlement is a viable option for Disney.\textsuperscript{192} Without a court decree of fault, Disney’s name is not tarnished, and its reputation and recognition are protected.\textsuperscript{193}

Additionally, settlement is not financially burdensome.\textsuperscript{194} As seen from COPPA violation cases previously discussed, FTC settlement amounts have been well under a few hundred thousand dollars.\textsuperscript{195} When looking at Disney, a multi-billion-dollar company topping the Fortune 500 list, similar fines would be a very small fraction of their business operating expenses.\textsuperscript{196} Costs of attorney’s fees, costs of damages and awards, and other miscellaneous costs associated with taking the class action lawsuit through a full trial, can well exceed the average costs of FTC fines for COPPA violations.\textsuperscript{197} At the early stages of the process, a settlement option for paying fines to the FTC and injured families can be financially advantageous to Disney.\textsuperscript{198}

highlighted by the cases discussed in this note, the companies have not admitted to any fault regarding the COPPA allegations. \textit{Id.}

\textsuperscript{192}\textit{See Web Sites, supra note 67} (highlighting companies do not admit fault and Disney would not need to admit fault for COPPA violations). If other companies have set a precedent for paying fines and not admitting fault, it would logically follow that Disney does not admit fault and simply pays FTC fines and maybe some type of financial compensation to the injured plaintiffs. \textit{Id.}

\textsuperscript{193}\textit{See About, supra note 2} (stressing the importance of Disney’s reputation, and how its image in the industry is what continues to grow its brand).

\textsuperscript{194}\textit{See Web Sites, supra note 67} (noting the minimal financial penalties incurred by companies that have been accused of COPPA violations). This is evident with the other companies mentioned in this Note regarding settlement. \textit{Id.} The companies have not admitted fault and have merely paid fines. \textit{Id.}

\textsuperscript{195}\textit{See Web Sites, supra note 67} (exposing the rather low financial fines imposed by the FTC when a company allegedly violates COPPA). Compared to companies that make multi-million-dollar profits, fines of only a few hundred thousand appear minimal. \textit{Id.}

\textsuperscript{196}\textit{See Fortune 500, supra note 4} (comparing Disney’s multi-billion-dollar operation to other companies who have received fines under a few hundred thousand dollars). The potential fines are very minimal compared to Disney’s overall business operations. \textit{Id.}

\textsuperscript{197}\textit{See Watts, supra note 73} (noting the minimal financial penalties incurred by companies that have been accused of COPPA violations can be advantageous to pay when compared to considering the full cost of litigation and taking a case to trial).

\textsuperscript{198}\textit{See Watts, supra note 73} (stipulating that Disney can simply pay the fines imposed, which from past precedent may be very minimal compared to Disney’s overall profits and can save itself the costs associated with taking a case through trial where the outcome could cost significantly more).
However, there are some negatives to settlement.199 Disney, being an entertainment giant, may set a precedent for other companies in the mobile gaming industry.200 Due to its brand strength and recognition, if it were to evade litigation and pay what seems to be minimal fines, it may down-play the importance of COPPA regulations.201 Other companies may follow suit and not put importance on their COPPA policies either.202 If it is as easy as paying a minimal fine, Disney and other companies would not have an incentive to rework their collection practices.203 This would defeat the entire purpose of FTC and COPPA regulations.204

More so, the plaintiffs may not be accurately compensated for their reported injuries.205 As outlined by the lawsuit, plaintiffs demand that Disney delete or destroy all of the collected data.206 If the case

199See Complying with COPPA: Frequently Asked Questions, supra note 47 (justifying the importance of abiding by COPPA and emphasizing how a settlement would not align with the general goal of protecting children).
200See About, supra note 2 (laying out Disney’s mission to lead the world in developing “the most creative, innovative and profitable entertainment experiences and related products in the world”).
201See Complying with COPPA: Frequently Asked Questions, supra note 47 (focusing on the importance of COPPA regulations and the need for children’s protection while online, which could be minimized by paying fines). If companies simply pay fines, there is no incentive to abide by COPPA. Id.
202See About, supra note 2 (acknowledging that Disney “manages the world’s largest media company and are the visionaries behind some of the most respected and beloved brands around the globe”); see also Children’s Privacy Policy, supra note 157 (recognizing that if Disney wants to use a child’s personal information, it must first seek a parent’s consent by email per COPPA regulations).
203See Complying with COPPA: Frequently Asked Questions, supra note 47 (circumventing the importance of COPPA, Disney could easily pay fines and not fully rework their COPPA policies which would affect children and their privacy).
204See Complying with COPPA: Frequently Asked Questions, supra note 47 (reaffirming the importance of online privacy protection for children and the need to abide by COPPA regulations). Children do not have the ability to consent to their information being tracked and monitored, it is the roll of the parents to do so, and companies are not allowing parents the control. Id.
205See Complaint, supra note 133, at 6 (highlighting that the purpose of COPPA stems from the need to protect the “vulnerability of children in the internet age” and requires that the developers of children’s applications must obtain verifiable consent from the parents of the children under 13 years old who use these applications). Plaintiffs have reported financial injuries, as well as requiring Disney to delete all data off its servers that it had previously collected from the applications in question. Id.
206See Complaint, supra note 133, at 6 (finding that collecting data from children is impermissible under COPPA as this data possess an incredible risk to children and
were settled, there may not be an imposition on Disney to delete or destroy this data. Once again, the fundamental idea behind COPPA, privacy protection for children online, is defeated by the settlement process. The information collected by Disney will still be available on advertiser servers and can still be transferred or sold. The harm suffered by the plaintiffs and their children will not be rectified. Additionally, the incentive to rework their parental consent policies may not be available in the settlement process. If not mandated to change their policies, the tracking and monitoring will continue to go on. Once again, this is defeating the purpose of COPPA.

See Complying with COPPA: Frequently Asked Questions, supra note 47 (highlighting other companies have not necessarily been required to update their privacy policies or parental consent procedures, and if Disney settles, they may not be required to update their policies and procedures).

See Complying with COPPA: Frequently Asked Questions, supra note 47 (explaining how the fundamental idea is to protect children and prevent the exposure of their personal information, and settlement would not give the children injured in the lawsuit the deletion of their data).

See Complying with COPPA: Frequently Asked Questions, supra note 47 (guaranteeing the protection of data, COPPA was enacted to allow parents more control over their children’s online privacy). With Disney settling the allegations, the control is taken away from parents and circumvents the enactment of COPPA.

See Complaint, supra note 133, at 7 (focusing on the fact that COPPA serves to protect “personal information” of children because this information consists of “persistent identifier[s] that can be used to recognize a user over time and across different Web sites or online services.”). When Disney settles, there is no guarantee that they will update their policies and delete the information collected prior to the settlement. Id. at 9.

See Complying with COPPA: Frequently Asked Questions, supra note 47 (noting other companies have not necessarily been required to delete data). If Disney settles, there may be no incentive for them to delete the data that they tracked and monitored, and the plaintiffs are not accurately compensated. Id.

See Complying with COPPA: Frequently Asked Questions, supra note 47 (explaining the importance of protecting data). Parents do not want data floating around on the internet and being sold for a profit, and they want control over their children’s data. Id. If Disney settles, this control is taken away, and parents and children are not compensated for the harm they suffered. Id.

See Complying with COPPA: Frequently Asked Questions, supra note 47 (stressing the fundamental importance of COPPA). If Disney settles, COPPA is irrelevant and plaintiffs’ harm is not rectified. Id.
V. Conclusion

When considering all the positives and negatives of settlement, it is likely Disney will settle the claims brought against them. It seems that the positives outweigh the negatives of settlement. With a quicker, more cost-effective process, Disney can pay minimal fines, update its privacy policies, and settle with the parents in the class action, all while maintaining its wholesome image and reputation. Disney prides itself as being a financial conglomerate in the mobile gaming industry and it illuminates a magical image in the minds of consumers. To maintain its respect, image, and profit potential it would be advantageous to keep the press about its alleged COPPA violations minimal and simply settle and move along.

Overall, COPPA needs reform due to the changing Internet landscape and the threats posed to children online in today’s world. Children are not always able to protect themselves against commercial exploitations. Parents are meant to shield children from online predatory practices, however with today’s internet landscape, it is becoming increasingly difficult to regulate children’s behavior and protect them from abusive marketing. It is imperative companies follow COPPA regulations and that the FTC actively monitors website providers. Children’s safety is of the utmost importance. As seen from the Disney allegations, even a company that consumers know and love may be putting aside effective safety measures just to turn a profit and keep themselves a leader in the mobile gaming industry. If it was not as easy to settle cases with minimal penalties, it may cause companies to think twice before they potentially violate COPPA and expose children.